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August 13, 1999

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Room TW-B204
Washington, D.C. 20554

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AUG 13 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Ex Parte Notification, Notice of Proposed Rulemaking,
1998 Biennial Regulatory Review — Spectrum Aggregation
Limits for Wireless Telecommunications Carriers,
WT Docket No. 98-205**

Dear Ms. Salas:

Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS"), submits this written ex parte to supplement the record with newly available data and to correct a minor discrepancy it discovered in an earlier submission to the Commission.

In its *Notice of Proposed Rulemaking*, the Commission requested analyses assessing the current level of concentration/competition in the mobile telephony market.¹ In response, Sprint submitted a Herfindahl-Hirschman Index ("HHI") analysis prepared by the economist, Dr. John Hayes, of the 25 most populous metropolitan statistical areas ("MSAs").² Dr. Hayes analysis was based on extensive market data that was obtained in January and July 1998.³

Similar market data was also retrieved in January 1999. Sprint PCS therefore asked Dr. Hayes to conduct a similar HHI analysis based on this new data, and Attachment A contains his analysis. The data show what one would expect: as additional time passes, new CMRS entrants are making additional inroads in the market, although concentration levels remain high (when measured by customer market data). The data thus

¹ See *1998 Biennial Regulatory Review — Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket No. 98-205, *Notice of Proposed Rulemaking*, FCC 98-308, at ¶¶ 4 and 35 (Dec. 10, 1998). See also Separate Statement of Commissioner Powell.

² See John B. Hayes, *CMRS HHI from Customer Share Data* (Jan. 25, 1999), appended as Attachment A to Sprint PCS Comments, WT Docket No. 98-205 (Jan. 25, 1999).

³ See *id.* at ¶¶ 4 and 7-17 (where Dr. Hayes describes the data and how he prepared his HHI analysis).

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confirms the Commission's report to Congress in June that "[i]n the year since the release of the *Third Report*, the mobile telephone market has made steady competitive progress," but that there is "still much progress that remains to be made."⁴


In submitting this data, Sprint PCS does not mean to suggest that customer market data is the only input the Commission should consider in evaluating whether to retain or modify the current spectrum cap. To the contrary, as the Commission has correctly noted, concentration levels can be measured in many ways (assigned spectrum, operational spectrum, subscriber counts, revenues, traffic/minutes of use).⁵ Sprint PCS submits an HHI analysis using market share data by customers served because the data is both relevant and available to it.

In preparing this supplemental analysis, Dr. Hayes discovered the Table 1 that Sprint PCS submitted with its January 25, 1999 comments contained a minor error. Specifically, in several markets in Table 1, AirTouch was mislabeled as AT&T Wireless and vice versa. This mislabeling, of course, does not change the HHI analyses in any way. Sprint PCS therefore requests that the Commission replace Table 1 that was appended with its comments with the revised Table 1 appended to this letter as Attachment B.

Pursuant to section 1.1206(a)(1) of the Commission's rules, Sprint PCS is filing an original and two copies of this notice.

Please contact the undersigned with any questions.

Sincerely,


Jonathan M. Chambers

cc. Pieter Van Leeuwen, Wireless Telecommunications Bureau
David Krech, Wireless Telecommunications Bureau
Walter Strack, Wireless Telecommunications Bureau

⁴ *Fourth Annual Report to Congress of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 99-136, at 62 and 63 (June 24, 1999).

⁵ *Notice of Proposed Rulemaking* at ¶¶ 33 and 36.

Attachment A

Table 1
HHIs in Top 25 MSAs & PMSAs

	January 1998	July 1998	Jan/Feb 1999
Atlanta (MSA) ¹	4329	4803	4511
Baltimore (PMSA)	3383	3334	3492
Boston (PMSA)	4001	3774	3801
Chicago (PMSA)	4119	3862	3360
Cleveland (PMSA)	3269	3086	3474
Dallas (PMSA) ²	3463	3229	3118
Detroit (PMSA) ¹	4194	4209	3917
Houston (PMSA)	2799	3170	2569
Los Angeles (PMSA)	3857	4044	3276
Miami (PMSA) ²	3998	4534	4068
Minneapolis (MSA) ²	4030	3687	3435
Nassau (PMSA) ²	4425	4041	4429
New York (PMSA)	4092	3873	3383
Newark (PMSA) ²	4074	4673	4178
Oakland (PMSA)	2996	3214	2789
Orange County (PMSA) ³	4124	3825	2857
Philadelphia (PMSA)	3919	3981	3279
Phoenix (MSA)	3353	3282	3106
Pittsburgh (MSA) ²	4487	4664	4434
Riverside (PMSA)	3965	4067	3388
San Diego (MSA)	3198	3416	2600
Seattle (PMSA) ²	4113	3699	3595
St. Louis (MSA)	4111	4019	3816
Tampa (MSA) ²	3763	3207	3265
Washington DC (PMSA)	3202	3237	3489

¹ Airtouch Cellular was formerly marketed under the Cellular One brand name. Consequently, customer counts for Airtouch Cellular and Cellular One were consolidated.

² AT&T Wireless was formerly marketed under the Cellular One brand name. Consequently, customer counts for AT&T Wireless and Cellular One were consolidated.

³ LA Cellular was formerly marketed under the Cellular One brand name. Consequently, customer counts for LA Cellular and Cellular One were consolidated.

Attachment B

Table 1
HHIs in Top 25 MSAs & PMSAs

	January 1998	July 1998
Atlanta (MSA) ¹	4329	4803
Baltimore (PMSA)	3383	3334
Boston (PMSA)	4001	3774
Chicago (PMSA)	4119	3862
Cleveland (PMSA)	3269	3086
Dallas (PMSA) ²	3463	3229
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³ LA Cellular was formerly marketed under the Cellular One brand name. Consequently, customer counts for LA Cellular and Cellular One were consolidated.